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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,132	01/18/2001	Thaddeus I. Kingsford	58091-A CCD	7826
7590	10/18/2005		EXAMINER	
Christopher C. Dunham c/o Cooper & Dunham LLP 1185 Avenue of the Americas New York, NY 10036			COMSTOCK, DAVID C	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,132

Applicant(s)

KINGSFORD ET AL.

Examiner

David Comstock

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005 and 25 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-10, 18-21, 29, 30 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 18-21, 29, 30 is/are rejected.
- 7) ☒ Claim(s) 9, 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claim 1-6, 8-10, 18-21, 29 and 30 is withdrawn in view of the newly cited reference(s) applied in the following rejections. In addition, since no generic claims are in condition for allowance, claims 4, 6 and 8 remain withdrawn from consideration pursuant to the Election/Restriction acknowledged by Examiner in the Action mailed on 20 March 2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 18, 19, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Davey (GB 103 083; cited by Applicant on IDS filed 25 July 2005).

Davey discloses a cosmetic unit 11 comprising an applicator 26, a material container unit 12, including a proximal well 25 and a distal portion 14 comprising a side wall 18 with a receptacle 21 having an open side (see Figs. 1 and 2). The receptacle is disposed distally of the well and opens laterally of the unit. A transparent cover 15 is rotatable about and slidable along the geometrical axis of the container to open and close the receptacle. The applicator is capable of being inserted into the well such that

its handle would project therefrom. The receptacles have pans holding make-up (see page 1, lines 104-105). The make-up includes lip colorant (see page 1, lines 108-112).

Claims 1-3, 5, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (FR 2759872; cited by Applicant on IDS filed 25 July 2005).

Gueret discloses a cosmetic unit 100 comprising an applicator 1, a material container unit including a proximal well 109 and a distal portion 105 comprising a side wall with a receptacle 108 having an open side (see Figs. 5A-5C). The receptacle is disposed distally of the well and opens laterally of the unit. A cover 104 is slidable along the geometrical axis of the container to open and close the receptacle. The handle of the applicator projects from the well. The receptacle holds a body of cosmetic material 107.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davey (GB 103 083; cited by Applicant on IDS filed 25 July 2005) in view of Yuhara et al. (6,192,895).

Davey discloses the claimed invention except for explicitly disclosing the divided pans and the removal aperture. Yuhara et al. disclose a cosmetic case 10 comprising a

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make-up pan 52 being divided so as to have two compartments 52b, 52c for holding a greater selection of make-up in a single pan and a removal aperture 12f to facilitate the removal of the pans (see Fig. 12 and col. 14, line 54 - col. 15, line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cosmetic unit of Davey with pans that are divided and with removal apertures, in view of Yuhara et al., in order to hold a greater selection of make-up and to facilitate the removal of the pans (at least the pans on one side of the device).

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (FR 2759872; cited by Applicant on IDS filed 25 July 2005) in view of Yuhara et al. (6,192,895).

Gueret discloses the claimed invention except for explicitly disclosing divided pans and the removal aperture. Yuhara et al. disclose a cosmetic case 10 comprising a make-up pan 52 that is divided so as to have two compartments 52b, 52c for removably holding a greater selection of make-up in a replaceable pan and a removal aperture 12f to facilitate the replacement of the pans (see Fig. 12 and col. 14, line 54 - col. 15, line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cosmetic unit of Gueret with pans that are divided and with removal apertures, in view of Yuhara et al., in order to removably hold a greater selection of make-up and to facilitate the replacement of the pans.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



D. Comstock
16 July 2005



EDUARDO C. ROBERT
PRIMARY EXAMINER